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March 28, 2002

VIA COURIERMr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED

MAR 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYAttention: Policy and Rules Division
Mass Media BureauRe: WPXP(TV) (Lake Worth, Florida)
Facility I.D. No 27290
Petition to Amend the TV Table of Allotments

Dear Mr. Caton:

On behalf of Hispanic Broadcasting, Inc., licensee of commercial television station WPXP(TV), Lake Worth, Florida, we hereby transmit an original and four copies of a *Petition for Rule Making* proposing a new channel pursuant to the Commission's band clearing policies outlined in the *Order on Reconsideration of the Third Report and Order* in MM Docket No. 00-39, FCC 01-258 (released September 17, 2001).

If any additional information is needed in connection with this matter, please contact me.

Respectfully submitted,



Jason E. Rademacher

Enclosure

cc(w/encl.): Clay Pendarvis

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b)
Table of Allotments,
Television Broadcast Stations
(Lake Worth, Florida)

MM Docket No. _____
RM- _____

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING TO AMEND
CONDITIONALLY THE TV TABLE OF ALLOTMENTS

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Dated: March 28, 2002

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SUMMARY

HBI submits this Petition to institute a rulemaking to amend the TV Table of Allotments by substituting Channel 56 for Channel 67 as the allocation for WPXP(TV), Lake Worth, Florida. HBI requests this channel change pursuant to the FCC's rules and policies encouraging clearance of Channels 60-69 and only as an incident to the Commission approving an underlying band-clearing agreement. Grant of this request will help facilitate clearance of Channels 60-69 for the introduction of new wireless and public safety services and enable WPXP(TV) to continue to offer relied-upon broadcast service to the Lake Worth community.

Given the spectrum shortage created by the DTV transition, Channel 56 represents the best available in-core allotment for WPXP(TV). The proposed channel change, however, would result in four short-spacings. Accordingly, the Petition includes a request for waiver of Section 73.610 of the Commission's rules. Because the channel change would further the Commission's band-clearing policies with little adverse impact, grant of the waiver request is in the public interest.

Allotments, by substituting Channel 56 for Channel 67 as the station's allocation. Specifically, the TV Table of Allotments would be amended as follows:

	<u>Present</u>	<u>Proposed</u> ³
Lake Worth, FL	<u>67</u>	<u>56</u>

Because of waivers that must be granted pursuant to the Commission's band-clearing policies, this amendment must be conditioned upon Commission approval of a band-clearing agreement with the winner or winners of the upper 700 MHz auction, currently scheduled for June 19, 2002.⁴ If for whatever reason, a band-clearing agreement is not completed, WPXP(TV) would remain on Channel 67.

Alternatively, the Commission could amend the Table of Allotments as follows:

	<u>Present</u>	<u>Proposed</u>
Lake Worth, FL	<u>67</u>	<u>56, 67</u>

Under this approach, the Commission would allot Channel 56 to Lake Worth as proposed herein and grant HBI authority to migrate WPXP(TV)'s analog operations from Channel 67 to Channel 56, conditioned on WPXP(TV)'s conclusion of a Commission-approved voluntary band-clearing

³ The Commission's band-clearing *Orders* plainly establish that upper 700 MHz broadcasters' are permitted to temporarily relocate to the lower 700 MHz band pursuant to a Commission-approved band-clearing agreement. See Service Rules for the 746-764 and 776-794 Bands and Revisions to Part 27 of the Commission's Rules, *Third Report and Order*, 16 FCC Rcd 2703, 2705, 2713, 2718 (2001). Nonetheless, certain language in the Commission's recent *Report and Order* in the lower 700 MHz proceeding has called this policy into question. See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, FCC 01-364, GN Docket No. 01-74 (rel. January 18, 2002) ("Lower 700 MHz Order"). The Spectrum Clearing Alliance, led by Paxson Communications Corporation, has filed a Petition for Clarification in that proceeding, to resolve any uncertainty. See Petition for Clarification or Reconsideration of the Spectrum Clearing Alliance, GN Docket No. 01-74, filed February 2, 2002; Supplement to the Petition for Clarification or Reconsideration of the Spectrum Clearing Alliance, GN Docket 01-74, filed March 8, 2002.

⁴ Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002, Further Modification of Package Bidding Procedures for Auction No. 31, *Public Notice*, DA 02-659, Report No. AUC-02-31-B (Auction No. 31) (rel. March 19, 2002).

agreement. Once an agreement is reached and WPXP(TV) relocates, the Commission could delete Channel 67 from the Television Table of Allotments.⁵

I. THE PROPOSED CHANNEL CHANGE WOULD FURTHER THE COMMISSION'S UPPER-700 MHz BAND-CLEARING POLICIES.

HBI files this petition pursuant to the Commission's efforts to achieve expedited reallocation of the upper 700 MHz band (*i.e.*, television Channels 59-69) from commercial television broadcast service to public safety and new commercial wireless services. A rulemaking is necessary to enable HBI to conclude an agreement that will allow WPXP(TV) to vacate Channel 67 in furtherance of the Commission's band-clearing policies. It will be difficult, if not practically impossible, for HBI to conduct effective negotiations with a wireless licensee without some level of certainty concerning the ability of WPXP(TV) to change channels. Such uncertainty will delay completion of the band-clearing process that this petition is intended to expedite. HBI determined that a petition for a new channel was necessary because WPXP(TV) cannot operate in analog on its digital allotment.⁶ Grant of the channel change will help preserve WPXP(TV)'s relied-upon over-the-air broadcast service and permit the station to complete an agreement to terminate operations on Channel 67, freeing the spectrum for new uses prior to the close of the DTV transition period.

In several formal orders, the Commission has adopted policies to facilitate voluntary upper 700 MHz band-clearing, including a "rebuttable presumption" in favor of arrangements

⁵ It is noted that the Allocations Branch has expressed its intention not to consider optional or alternative rulemaking proposals in FM channel allotment cases. Winslow, Camp Verde, Mayer and Sun City West, Arizona, *Memorandum Opinion and Order*, 16 FCC Rcd 9551, ¶ 9 (2001). The Commission is not bound by such precedent here, however, given the presence of other important policy considerations. HBI requests that the Commission choose which approach might best accomplish its band-clearing goals consistent with the formalities of its rulemaking process.

⁶ See Technical Exhibit at 3.

and regulatory requests that facilitate band clearing.⁷ Regulatory requests that (1) will hasten the availability of 2.5 or 3G services available to consumers; (2) clear commercial frequencies that enable the provision of public safety services; or (3) result in the provision of wireless services to underserved communities gain the benefit of this presumption, so long as the request does not result in the loss of (1) any of the four stations in a DMA with the largest audience share; (2) the sole service licensed in a local community; or (3) a community's sole service on a channel reserved for noncommercial educational broadcast service.⁸ HBI's channel change request satisfies these criteria by significantly increasing the likelihood that WPXP(TV) will vacate Channel 67 in the near-term, freeing the spectrum for 2.5 and 3G wireless services, without creating any of the enumerated service losses.

In cases such as this, where the rebuttable presumption applies, the regulatory request will only be denied where "special or unique factors raised by the resulting loss of broadcast service would be sufficient to rebut the presumption."⁹ As demonstrated below, the Channel 56 operation of WPXP would cause very little actual interference or loss of broadcast service while doing much to further the Commission's important band-clearing policies.

II. THE PROPOSED FACILITIES CREATE A NET SERVICE GAIN AND ONLY MINIMAL INTERFERENCE.

The attached Technical Exhibit of du Treil, Lundin & Rackley, P.C. (the "Technical Exhibit") provides detailed information concerning the technical operations of WPXP(TV)'s proposed Channel 56 operations. As indicated, by operating on Channel 56, WPXP(TV) would comply with the community coverage requirements of Section 73.685(a) of the Commission's rules, and have no impermissible impact on any full power analog or DTV stations.

⁷ The Commission established its "rebuttal presumption" to designate favorable review of efforts to clear incumbent television stations, believing that substantial public interest benefits would arise in these circumstances. *Upper 700 MHz MO&O and FNPRM*, ¶¶ 60-62.

⁸ *Id.*, ¶ 61.

⁹ *Id.*, ¶ 63.

Moreover, as a result of an increased effective radiated power and different directional antenna, operation of WPXP(TV) on Channel 56 will result in a large gain area resulting in 2,268,209 persons receiving new service from WPXP(TV).¹⁰ As shown in the technical exhibit, the Grade B contour of WPXP(TV)'s proposed Channel 56 operations will encompass entirely the Grade B contour of the station's current Channel 67 operations, resulting in no loss of service to current viewers.

HBI's proposed Channel 56 operations are predicted to cause negligible interference to three existing analog television stations, but actually would result in a net reduction of interference if the proposed Channel 63 operation of WPPB-TV, Boca Raton, Florida is authorized.¹¹ The interference would affect only 206 viewers within the Grade B contour of WXEL-TV, West Palm Beach, Florida; only 127 viewers within the Grade B contour of WOTV(TV), Melbourne, Florida; and only 274 viewers within the Grade B contour of WPPB-TV's current Channel 63 operations.¹² In each of these cases, interference would be caused to less than one one-hundredth of a percent of the population within the stations' service areas. This minute amount of potential interference should not restrain the Commission from granting HBI's regulatory request in light of the substantial public interest benefits the proposal would serve.

III. CONDITIONAL AUTHORITY IS WARRANTED AS FACILITATING BAND-CLEARING.

In this proceeding, HBI asks the Commission to grant WPXP(TV) some form of conditional authority to relocate its analog operations to Channel 56 upon conclusion and Commission approval of a band-clearing agreement. Indeed, given the short-spacings created by

¹⁰ See Technical Exhibit at 4-5.

¹¹ See Technical Exhibit at 4. HBI's proposed Channel 56 operations would cause interference to 8,255 fewer viewers reached by WPPB-TV's proposed Channel 63 operations (FCC File No. BPET-200000301AAL) than its current Channel 67 operations would cause.

¹² See Technical Exhibit at 4.

the proposed reallocation, the Commission only is free to grant the channel change pursuant to such a band clearing agreement.¹³ Yet, no band-clearing agreement likely can be reached without the Commission providing some level of certainty about the channel-change request. Accordingly, the Commission can resolve this “chicken and egg” problem by granting some form of conditional authority.

At the outset, then, this regulatory request differs from general allotment rulemaking requests because the Commission generally requires an unequivocal expression of interest in a proposed allotment at the time of the initial request.¹⁴ Moreover, the Commission does not grant allotment requests that are contingent on the outcome of ongoing or future Commission proceedings.¹⁵ Neither of these policies, however, should deter the Commission from considering HBI’s regulatory request.

A. HBI’s Expression of Interest in Channel 56 is Sufficiently Definite to Justify Issuance of an NPRM.

The Commission has in the past proposed allocations based on conditional expressions of interest in new allotments where the public interest is served by the proposal.¹⁶ In *Las Vegas and Paradise*, the Commission allotted a channel to Paradise, Nevada, despite the fact that, due to radio-television cross-ownership restrictions, the proponent of the allotment could only commit to applying for a construction permit on the channel if it were not granted a construction permit for a nearby FM channel for which it had applied.¹⁷ Similarly in *Roseburg, Oregon*, the

¹³ See *infra*, Section V.

¹⁴ See Albion, Lincoln, and Columbus, Nebraska, *Memorandum Opinion and Order*, 10 FCC Rcd 11931, ¶ 9 (1995) (citing Morristown, New York, *Report and Order*, 5 FCC Rcd 6976 (1990)).

¹⁵ Cut and Shoot, Texas, *Memorandum Opinion and Order*, 11 FCC Rcd 16383, ¶ 5 (1996) (“*Cut and Shoot*”); Columbia City, Florida, *Report and Order*, 14 FCC Rcd 21165, fn. 1 (1999) (“Our policy is not to accept proposals that are dependent or contingent upon finality of other actions or proceedings”).

¹⁶ See Roseburg, Oregon, *Notice of Proposed Rulemaking*, 6 FCC Rcd 153, ¶ 2 (1991) (“*Roseburg*”), petition granted, 6 FCC Rcd 4369 (1991); Las Vegas and Paradise, Nevada, *Report and Order*, 57 RR2d 1433, ¶ 7 (1985) (“*Las Vegas and Paradise*”).

¹⁷ *Las Vegas and Paradise*, ¶ 3.

Commission allotted a channel where the petitioner would commit to applying for the license only if it the allotment was completed prior to a comparative hearing regarding another channel in which the petitioner was involved.¹⁸

The same degree of certainty offered by the petitioners in *Las Vegas and Paradise* and *Roseburg, Oregon* is present here. If a band-clearing agreement is concluded and the necessary authority granted, WPXP(TV) will terminate operations on Channel 67 and move to Channel 56. If there is no band-clearing agreement, WPXP(TV) will stay on Channel 67. Moreover, just as in *Roseburg, Oregon*, the allotment of the channel enabled the Commission to further its policy of resolving competitive licensing proposals without hearing, grant of the channel change would enable the Commission to further its band-clearing policies by making it significantly more likely that HBI will conclude a band-clearing agreement involving WPXP(TV).

B. The Proposed WPXP(TV) Channel Change is not Impermissibly Contingent on Future Commission Actions.

The Commission generally forbids allotment requests that are contingent on other Commission proceedings.¹⁹ This policy was adopted to preserve administrative resources in processing proposed allotment changes based on uncertain future circumstances.²⁰ This, however, should not preclude HBI's request because the type of concurrent Commission proceeding that it envisions is one that implicates the technical suitability of the regulatory request before the Commission.²¹ In contrast, the technical information necessary to grant HBI's regulatory request is contained entirely in this petition, and none of that information is based on

¹⁸ *Roseburg*, ¶ 2.

¹⁹ *See supra*, note 13.

²⁰ *Cut and Shoot*, ¶ 5.

²¹ *Id.* at 4-5. In *Cut and Shoot*, for example, the unacceptable contingency was created because the petition only would have complied with the minimum spacing requirements if a third party actually constructed the facilities licensed in its outstanding construction permit. The Commission reasoned that it could not depend on the acts of a third party to effect compliance with the rules was an inefficient use of Commission resources.

the outcome of any pending Commission proceeding. The only future Commission act upon which HBI's regulatory request is contingent is the Commission's approval of a band-clearing agreement involving WPXP(TV). Nothing in such an agreement would alter the technical parameters of the station's proposed Channel 56 operations, and the agreement will not affect the extent to which the proposal conforms with the Commission's rules.

IV. REQUEST FOR WAIVER OF THE MINIMUM SEPARATIONS REQUIREMENTS (47 C.F.R. § 73.610)

The proposed regulatory request will result in four short-spacings, in contravention of Section 73.610 of the Commission's rules.²² HBI was unsuccessful in its diligent search for an available, fully spaced channel/site combination. Accordingly, HBI submits the following request for waiver of Section 73.610 of the Commission's rules to permit the short-spacing described herein.

The Commission established the Television Table of Allotments so that stations licensed to a given community could operate with maximum power and antenna height without creating objectionable interference to one another.²³ To guarantee interference-free operations for stations assigned to the allotted channels, the Commission established minimum mileage separations – contained in Section 73.610 of its rules – and has allowed only limited deviations from those separations. The Commission applies a strict standard to requests for waiver of the spacing requirements at the allotment stage, but will grant waiver in “extraordinary” circumstances or where a “compelling need” is in evidence, such as is present here.²⁴

HBI requires a waiver of Section 73.610 because its proposed reallocation of Channel 56 would create four short-spacings to existing analog television stations, although only minimal

²² 47 C.F.R. § 73.610.

²³ See *Ogden Television, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 3116, ¶ 7 (1992).

²⁴ See, e.g., *Pueblo, Colorado, Memorandum Opinion and Order on Remand*, 1999 FCC LEXIS 3159, MM Docket No. 93-191, RM-8808, FCC 99-162, ¶ 24 (1999) (“*Pueblo*”).

interference is predicted to be caused to any of the four stations. Specifically, the proposed WPXP(TV) facilities would be short-spaced by 92.43 km to WXEL(TV), Channel 42, West Palm Beach, Florida; by 139.40 km to WOPX(TV), Channel 56, Melbourne, Florida; by 12.09 km to WFGC(TV), Channel 61, Palm Beach, Florida; and by 47.23 km to WPPB-TV, Channel 63, Boca Raton, Florida.²⁵ For three of the stations, interference of less than one-hundredth of a percent of the relevant station's service area population and the fourth station, WFGC, is not predicted to receive any interference.²⁶ The creation of such short-spacings would be in the public interest, however, given the extraordinary need to clear the upper 700 MHz band and the complimentary need to preserve the service currently provided by WPXP(TV). To achieve these ends, Channel 56 is the most viable alternative and creates the fewest short-spacings.

A. The Commission's Extraordinary Band-Clearing Efforts Justify Creating Short-Spacings at the Allotment Stage.

Because the minimum distance requirements presumptively serve the public interest, applicants seeking waiver of the short-spacing rules at the allotment stage are required to show an "extraordinary" or "compelling" need or a "special justification."²⁷ Generally, very few

²⁵ As shown in the Technical Exhibit, HBI's proposed Channel 56 operations also would be short spaced to the operations proposed in pending facilities modification applications of WFGC(TV) (FCC File No. 20001229AAL) (short spaced by 31.03 km) and WPPB-TV (FCC File No. 20000301AAL) (short spaced by 29.55 km). See Technical Exhibit, Figure 3A. As described above, the proposed Channel 56 operations would cause interference to 8,255 fewer viewers than currently receive it. See *supra*, n. 9.

²⁶ See Technical Exhibit at 4-5.

²⁷ See, e.g., Portland, Tennessee, *Memorandum Opinion and Order*, 35 FCC 2d 601, ¶ 4 (1972); Toms River, New Jersey, *Memorandum Opinion and Order*, 43 FCC 2d 414, ¶ 11 (1973); Chester and Wedgefield, South Carolina, *Memorandum Opinion and Order*, 5 FCC Rcd 5572, ¶ 4 (1990). This differs from the standard applied to applications that propose short-spaced operations. At the applications stage, proponents are required to show only that the Commission's rules and policies would be better served by waiving, rather than adhering to, the minimum distance separations. If no fully-spaced site for a broadcast station is available at the application stage, the Commission will consider the public interests implicated by a proposed short-spacing by considering several factors, including the magnitude of the short-spacing, the nature and extent of any predicted loss of service, and whatever technical proposals that might reduce or eliminate objectionable interference. K-W TV, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 3617, ¶ 8 (1992); KRCA License Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 1794, ¶ 15 (1999). See also Sarkes Tarzian, Inc., *Memorandum Opinion and Order*, 6 FCC Rcd 2465, ¶ 10-14

allotment proposals satisfy this heightened waiver standard. Some that did were in the *VHF Drop-In Proceeding*, where the Commission explicitly noted the unique circumstances surrounding the proceeding and that a “large public benefit [was] gained at a minimal cost.”²⁸ In adopting the short-spaced allotments, the Commission stated that the basic issue before it was “whether the benefits of added competition, diversity and service . . . outweigh claims of potential harm.”²⁹

Similarly, in *Ventura, California*,³⁰ the Commission itself proposed establishing a short-spaced allotment because the original allotment was displaced by a reallocation to public safety services. Faced with the loss of a new broadcast service, the Commission proposed substituting a short-spaced allotment for the reallocated channel. The Commission acknowledged that it was “extremely unusual” to propose such a short-spacing, but said the substitution was “appropriate” because the forced reallocation was “unique” and left “limited options available.”³¹ The Commission faces similar circumstances here.

If incumbent broadcasters in the upper 700 MHz band do not voluntarily clear the band, public safety and wireless service providers will not be able to deploy critical new services for the foreseeable future. The Commission has recognized the extraordinary situation created by the need to clear the upper 700 MHz band by announcing an unprecedented policy of encouraging and facilitating incumbent broadcasters’ voluntary relocation so that public safety

(1991) (“The Commission considers several factors . . . and each request stands on its particular facts”) (“*Sarkes Tarzian*”).

²⁸ London, Kentucky, *Memorandum Opinion and Order*, 7 FCC Rcd 5936, ¶ 7 (1992) (citing Amendment of Television Table of Allotments to Add New VHF Stations in the Top 100 Markets, *Report and Order*, 81 FCC 2d 233 (1980) (“*VHF Drop-In Proceeding*”), in which the Commission added “drop-in” channels to the existing television allocation plan) (“*London*”).

²⁹ *VHF Drop-In Proceeding*, ¶ 4.

³⁰ Ventura, California, *Notice of Proposed Rule Making*, MM Docket No. 85-390, 50 Fed. Reg. 52806 (1985).

³¹ *Id.*, ¶ 6. The Commission ultimately selected a non-short-spaced allotment for the reallocation but maintained that its rationale for proposing the short-spaced allotment was appropriate. Ventura, California, *Report and Order*, 2 FCC Rcd 5882, ¶¶ 15-17 (1987).

and commercial wireless operations can commence earlier than otherwise possible.³² The FCC has reallocated the upper 4 MHz section of WPXP(TV)'s current Channel 67 for non-broadcast, fixed and mobile commercial uses, and the lower 2 MHz for a guard-band between commercial users and public safety users.³³ If this spectrum is not available until broadcasters are required by law to vacate their channels, the introduction of new wireless services will be needlessly curtailed.³⁴ Moreover, due to interdependent public safety channelization and adjacent-channel protection requirements, public safety operators' ability to use the upper 700 MHz channels allotted to them will be restricted so long as there are broadcast television operations on adjacent channels.³⁵ WPXP(TV)'s Channel 67 is adjacent to the public safety allocation of a portion of Channel 68. By alleviating adjacent channel interference concerns, band clearing proposals like WPXP(TV)'s waiver request will facilitate public safety uses of the upper 700 MHz band that the Chairman has described as "critical."³⁶

³² *Upper 700 MHz First Report and Order*, ¶ 145.

³³ Service Rules for the 746-764 and 776-794 MHz Bands, *First Report and Order*, 15 FCC Rcd 476, ¶ 32 (2000). The Commission maintained the current broadcast allocation for the duration of the DTV transition. Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953, ¶ 18 (1998).

³⁴ To ensure that the number of viewers losing television service is kept to a reasonable minimum, Congress ordered that the DTV transition could extend beyond December 31, 2006 if fewer than 85% of households in a given market have the capability of viewing DTV signals. 47 U.S.C. § 309(j)(14)(B). Accordingly, the actual end of the DTV transition period is uncertain, leading some to assert that the band may not be cleared until 2025. See Jonathan Bloom, *Picture Fuzz on Digital TV's Future*, BOSTON HERALD, Feb 25, 2001, at 47.

³⁵ The Development of Operational, Technical and Spectrum Requirements, For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements For Priority Access Service, *Second Memorandum Opinion And Order* 15 FCC Rcd 16844, ¶¶ 24-35 (2000). Public Safety operators have been allotted Channels 63, 64, 68 and 69. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Third Memorandum Opinion and Order and Third Report And Order*, 15 FCC Rcd 19844, ¶ 16 (2000). Consequently, all four television channels being reallocated to public safety, plus channels adjacent to those allotted must be cleared to permit full use of the channels by public safety operators.

³⁶ Michael Powell, *Public Safety Spectrum*, Wash. Post, Oct. 23, 2001, at A22.

Therefore, this request is proposed pursuant to an “extraordinary” proceeding. Like the situation presented in the *VHF Drop-In* proceeding, the circumstances faced by WPXP(TV) are common to only a small number of broadcasters; and the proposed solution promises to bring substantial public benefits while bringing only minimal new interference to the short-spaced stations.³⁷ In addition, like the situation in *Ventura, California*, the Commission has “limited options” to accomplish the important simultaneous goals of facilitating the introduction of new wireless and public safety services and maintaining broadcast television service throughout the DTV transition. For these reasons, WPXP(TV)’s waiver request satisfies the Commission’s heightened standard for approving short-spacings at the allotment stage.

B. Grant of the Waiver Request Would Preserve Broadcast Service at Little Cost.

More than just a result of an “extraordinary” proceeding, however, the waiver also evidences a “compelling need” in the public interest. If this short-spacing waiver was filed pursuant to an application, the Commission would measure the request by weighing multiple public interest factors, which would include a traditional determination of the impact and necessity of the proposed facilities.³⁸ At the allotment stage, the Commission incorporates this analysis as a general public interest determination of whether a “compelling need” exists.³⁹

³⁷ See Technical Exhibit. In many cases the Commission has expressed its reluctance to allow short spacings at the allotment stage because of the threat such allotments pose to the TV Table of Allotments. See e.g. *London*, ¶ 7. That concern is considerably less relevant here, because, as will be discussed more fully below, any compromise of the Table of Allotments will cease at the close of the DTV transition, when WPXP(TV) will begin exclusive operations on its DTV allotment. Cf. *KRCA*, ¶ 6.

³⁸ See *KRCA*, ¶ 16; *Sarkes Tarzian*, ¶¶ 10, 14.

³⁹ See *Pueblo*, ¶ 24-29 (recognizing that although the public interest criteria applied at the application stage are not applicable at the allotment stage, a general public interest determination is part of the “compelling need” standard). In *Pueblo*, the Commission disavowed the application-stage waiver standards in favor of a general public interest determination in the face of exigent circumstances. *Id.* The Commission concluded in that case that the sole public benefit produced by the short-spaced allotment was too insubstantial to satisfy the compelling need standard. *Id.*, ¶ 26.

HBI's request satisfies this standard. Grant of this short-spacing waiver would result in "a large public interest benefit gained at minimal cost."⁴⁰ The Commission has stated that, in its review of specific requests to clear the 700 MHz spectrum, it would "consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services."⁴¹ Grant of HBI's proposed channel change will hasten the availability of these services.

Also weighing in WPXP(TV)'s favor, the proposed facility is predicted to create only minimal interference to the four short-spaced stations. The Commission has stated that its policies are intended to "strike an appropriate balance between the objectives underlying [] established interference policies and the need to provide broadcasters with greater flexibility to implement band-clearing agreements."⁴² Given the lack of any substantial interference caused by the WPXP regulatory request, that balance is not threatened here. Indeed, in *KRCA*, the Commission found such an absence of interference to be "significant" in granting the short-spacing waivers at the application stage, noting that the purpose of the separations rule "[would] not be undermined" despite short-spacings of considerable magnitude.⁴³

The similarities, however, between *KRCA* and the waiver proposed in this petition do not end there. As in *KRCA*, the need for WPXP(TV)'s short-spacing waiver is *temporary*.⁴⁴ When WPXP(TV) switches to digital operation, the station will be in full compliance with the Commission's rules and a waiver no longer will be needed. Additionally, as in *KRCA*, grant of the waiver will hasten the implementation of digital television.⁴⁵ The Commission has

⁴⁰ *Supra*, n. 27.

⁴¹ Upper 700 MHz First Report and Order, ¶ 145.

⁴² *Upper 700 MHz Third Report and Order*, ¶ 31.

⁴³ *KRCA*, ¶ 20.

⁴⁴ *Id.*

⁴⁵ *Id.*, ¶ 19.

recognized that the 700 MHz band-clearing process will “expedite a transition to DTV for broadcasters who might need assistance to implement such a transition.”⁴⁶ Lastly, as in *KRCA*, the proposed WPXP(TV) facilities would result in service area gains.⁴⁷ Although *KRCA* is an application-stage case, and therefore not fully applicable at the allotment stage, the Commission has made clear that it reflects the Commission’s evolving view of the public interest determination necessitated by band-clearing regulatory proposals.⁴⁸ Therefore, given the similarities between the instant regulatory request and *KRCA*, the Commission has ample precedent to grant the WPXP(TV)’s petition.

CONCLUSION

Granting HBI’s regulatory request would be in the public interest because doing so would preserve television service, accelerate the clearing of the upper 700 MHz band and facilitate the introduction of critically needed public safety and commercial wireless services. Each of these benefits would be achieved while reducing net interference to existing and proposed operations. By granting the concomitant waiver request of the minimum distance requirements, the Commission will also sustain its policy of ensuring diverse, accessible broadcast services in smaller markets. Therefore, the Commission should act to further its policies of clearing the upper 700 MHz band by granting HBI’s regulatory request.

WHEREFORE, for the foregoing reasons, HBI respectfully requests that the Commission initiate a rule making proceeding to amend Section 73.606(b) of its rules to allot Channel 56 at Lake Worth, Florida. This allotment would serve the public interest because WPXP(TV) would be able to continue offering television service to the Lake Worth community while new

⁴⁶ *Upper 700 MHz MO&O and FNPRM*, ¶ 48.

⁴⁷ See Technical Exhibit at 4-5. HBI recognizes, however, that the Commission explicitly determined that the issue of service area gains was not dispositive in granting the waivers in *KRCA*. See *KRCA*, ¶ 21.

⁴⁸ In considering individual regulatory requests to clear the 700 MHz spectrum, the Commission, specifically citing *KRCA*, said that it would weigh the “multiple public interest factors” that would be involved. *Upper 700 MHz MO&O and FNPRM*, ¶ 63 n.124.

opportunities for the use of Channel 67 for public safety or new wireless services will be created, resulting in a more efficient use of the broadcast spectrum.

Respectfully Submitted,

HISPANIC BROADCASTING, INC.

By:

John R. Feore, Jr.

Scott S. Patrick

Jason E. Rademacher

Its Attorneys

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202-776-2000

Dated: March 28, 2002

ATTACHMENT

TECHNICAL EXHIBIT

ENGINEERING EXHIBIT
PETITION FOR RULEMAKING
STATION WPXP(TV)
LAKE WORTH, FLORIDA

JANUARY 28, 2002

CH 56 5000 KW (MAX-DA) 383 M

ENGINEERING EXHIBIT
PETITION FOR RULEMAKING
STATION WPXP(TV)
LAKE WORTH, FLORIDA
CH 56 5000 KW (MAX-DA) 383 M

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ENGINEERING EXHIBIT
PETITION FOR RULEMAKING
STATION WPXP(TV)
LAKE WORTH, FLORIDA
CH 56 5000 KW (MAX-DA) 383 M

Technical Narrative

This Engineering Exhibit was prepared on behalf of television broadcast station WPXP(TV) at Lake Worth, Florida, in support of a Petition for Rulemaking prepared pursuant to the band clearing provisions outlined in the *Order on Reconsideration of the Third Report and Order* in MM Docket No. 00-39 (released September 17, 2001). This application proposes the analog migration of WPXP(TV) from channel 67 to channel 56. The proposed channel 56 facility will operate with a maximum peak visual effective radiated power (ERP) of 5000 kW and an antenna height above average terrain (HAAT) of 383 meters.

The proposed WPXP(TV) allotment reference coordinates are the same as the DTV authorization for WPXP (26-35-20 N, 80-12-44 W, NAD 27). As detailed herein, the proposal does not meet the minimum distance separation requirements of Section 73.610 of the FCC Rules with respect to four analog television stations. The *de minimis* interference requirements, as outlined in the FCC's DTV Processing Guidelines, are met with respect to all pertinent DTV facilities¹. Waivers are requested with respect to the four analog television short spacings.

¹ See FCC *Public Notice*, "Additional Application Processing Guidelines for Digital Television (DTV)", Released: August 10, 1998. See also, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, FCC 98-315, Released: December 18, 1998.

Proposed Facilities

A directional transmitting antenna will be employed with a center of radiation located at 382.2 meters above ground level (387.7 meters AMSL). The proposed facility will operate on channel 56 with a maximum directional peak visual ERP of 5000 kW (37.0 dBk) and an antenna radiation center HAAT of 383 meters. Station WPXP(TV) will employ a minus (-) carrier offset for its channel 56 analog operation.

The proposed facility is compliant with Section 73.614(b) concerning maximum permissible ERP and HAAT.

There are no AM broadcast stations located within 3.2 km of the transmitter site. Although no adverse electromagnetic impact is expected, the applicant recognizes its responsibility to correct problems that result from its proposed operation.

The proposed transmitter site is beyond the 400 km coordination zones with Canada and Mexico. The closest FCC monitoring station is at Vero Beach, Florida, approximately 121 kilometers to the northwest. The closest point of the National Radio Quiet Zone (VA/WV) is more than 1,200 kilometers to the north. The closest point of the Table Mountain Radio Quiet Zone (CO) is more than 2,700 kilometers to the northwest. The closest radio astronomy site operating on TV channel 37 is at Green Bank, West Virginia, more than 1,300 kilometers to the north. These separations are sufficient to not be a concern for coordination purposes.

Allocation Considerations

Figure 3A is a summary of the allocation analysis. As indicated, the proposed WPXP(TV) channel 56 facility does not meet the requirements of Section 73.610 of the FCC Rules concerning the following analog television facilities:

- WXEL-TV, West Palm Beach, FL, channel 42
- WOPX(TV), Melbourne, FL, channel 56
- WFGC(TV), Palm Beach, FL, channel 61
- WPPB-TV, Boca Raton, FL, channel 63

A waiver of Section 73.610 of the FCC Rules is requested concerning the above four analog stations. Justification for the waiver is detailed below and also in the legal exhibit attached elsewhere to this filing.

Station WPXP(TV) is not able to use its DTV allotment channel (36) for analog operation due to limitations imposed by station WTCE(TV) on channel 21 at Fort Pierce, FL. A search of the TV band from channels 2-59 does not reveal any channel that meets the FCC's minimum separation requirements. Except for channel 56, no channel was found that would comply with the FCC's interference requirements while enabling principal city coverage to Lake Worth and an service area comparable to that of the current WPXP analog operation on channel 67.

Furthermore, there are no fully-spaced sites available for channel 56 that would comply with the city coverage requirements of Section 73.685. In order for WPXP(TV) to meet the minimum separation requirement to station WOPX(TV) (329 kilometers), a minimum site relocation of 153 kilometers would be necessary. The City Grade (80 dBu) contour for a maximum UHF NTSC facility (5000 kW, 610 meters) extends outward 69.4 kilometers. Therefore, WPXP(TV) would not be able to achieve adequate City Grade coverage of Lake Worth. The map in Figure 3B shows the minimum separation distance circle (329 kilometers) imposed by station WOPX(TV). Also, any relocation of the WPXP(TV) transmitter site would eliminate the desired "co-location" with 1st adjacent DTV station WPTV-DT (West Palm Beach) and would further complicate the allocation situation.

Concerning predicted interference to DTV allotments and assignments, detailed interference analyses were conducted pursuant to the procedures outlined in the FCC

Rules and the OET-69 Bulletin. DTV stations selected for analysis were determined pursuant to the distance requirements outlined in the FCC DTV Processing Guidelines Public Notice.

Stations Potentially Affected by Proposed WPXP(TV)							
Chan	Call	City/State	Bear(°T)	Dist(km)	Status	App. Ref. No.	
42	WXEL-TV	WEST PALM BEACH FL	246	3.3	LIC	BLET-19820625KF	
55	WPTV-DT	WEST PALM BEACH FL	90	0.0	PLN	DTVPLN-DTVP1492	
55	WPTV	WEST PALM BEACH FL	90	0.0	CP MOD	BMPCDT-20011025ABN	
56	WOPX	MELBOURNE FL	332	190.0	LIC	BLCT-19980327KF	
57	NEW	BOYNTON BEACH FL	246	3.3	APP	BPRM-20000914AAV	
63	WPPB-TV	BOCA RATON FL	177	66.4	APP	BPET-20000301AAL	
63	WPPB-TV	BOCA RATON FL	175	48.6	LIC	BLET-19990512KE	

The table below shows the new interference predicted to be caused by the proposed WPXP(TV) channel 56 analog operation to each station listed. Only those stations predicted to receive interference from WPXP(TV) are shown. As can be seen below, the *de minimis* interference requirements are met in all cases considered.

Study Station	Baseline	Net Population Change/Interference
42 WXEL-TV WEST PALM BEACH FL (LIC)	2,451,799	206 (0.0%)
56 WOTV MELBOURNE FL (LIC)	1,975,859	127 (0.0%)
63 WPPB-TV BOCA RATON FL (APP)	3,679,253	-8,255 (-0.2%) *less net interference caused
63 WPPB-TV BOCA RATON FL (LIC)	2,367,852	274 (0.0%)

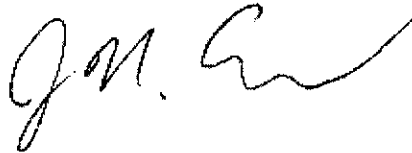
With respect to Class A TV station protection, the proposal has been evaluated according to the requirements of Section 73.613 of the FCC Rules. The analysis reveals no potentially affected Class A TV facilities.

Service Areas

The increase in ERP will result in predicted Grade B gain area. There will be no predicted loss area for the proposed WPXP(TV) operation. An analysis has been conducted of the population and land area within the gain area. Figure 2 is a map illustrating

the WPXP(TV) Grade B coverage gain area. The table below summarizes the situation with respect to the predicted Grade B contour gain area.

Subject Area	Land Area (sq. km)	Population (2000)
Licensed WPXP(TV) Predicted Grade B	6,688	1,919,366
Proposed WPXP(TV) Predicted Grade B	11,570	4,187,575
Common Grade B Overlap Area	6,688	1,919,366
WPXP(TV) Grade B Loss Area	NONE	NONE
WPXP(TV) Grade B Gain Area	4,883	2,268,209

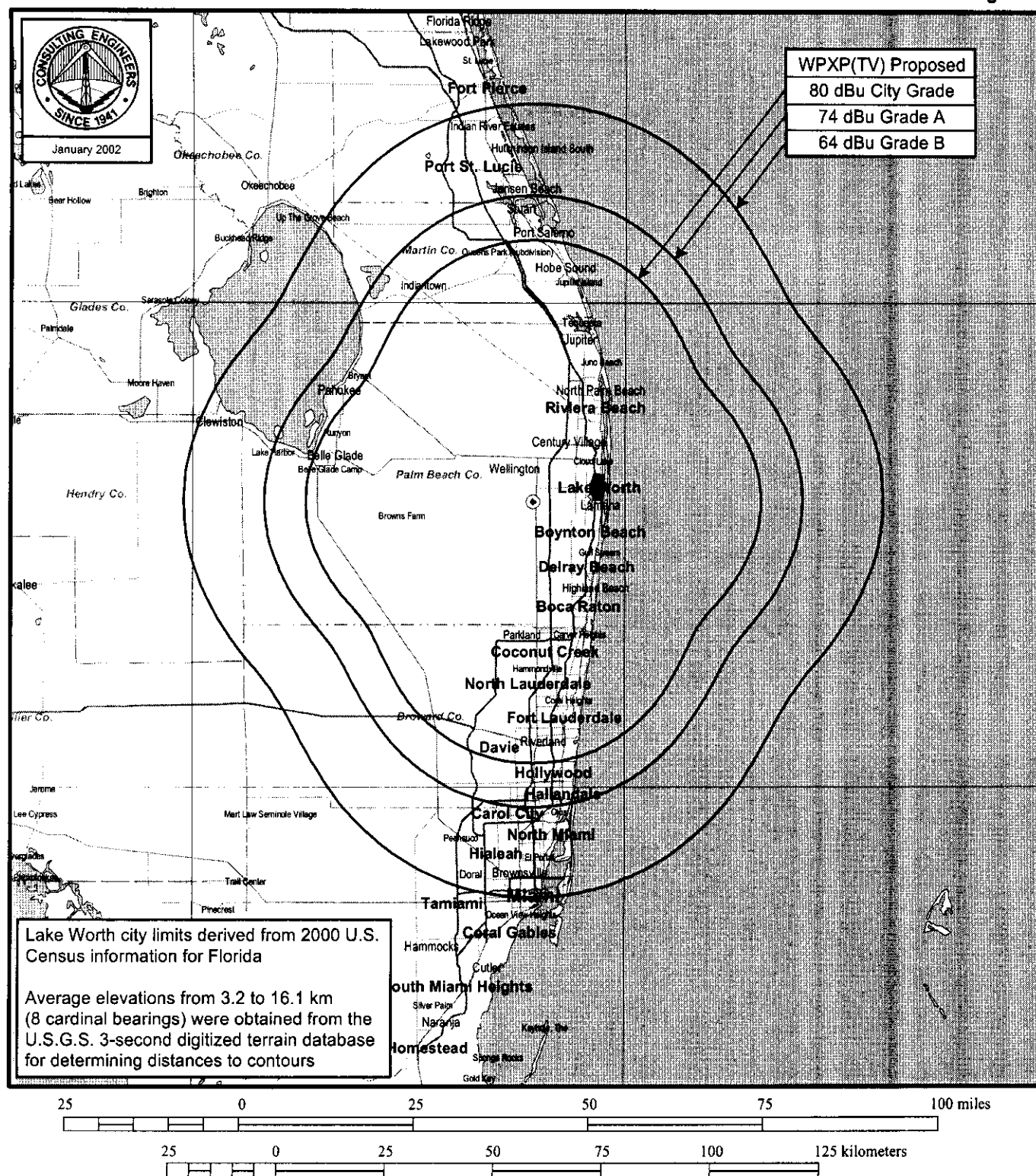


Jonathan N. Edwards

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201 Fletcher Avenue
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January 28, 2002

Figure 1



PREDICTED F(50,50) COVERAGE CONTOURS

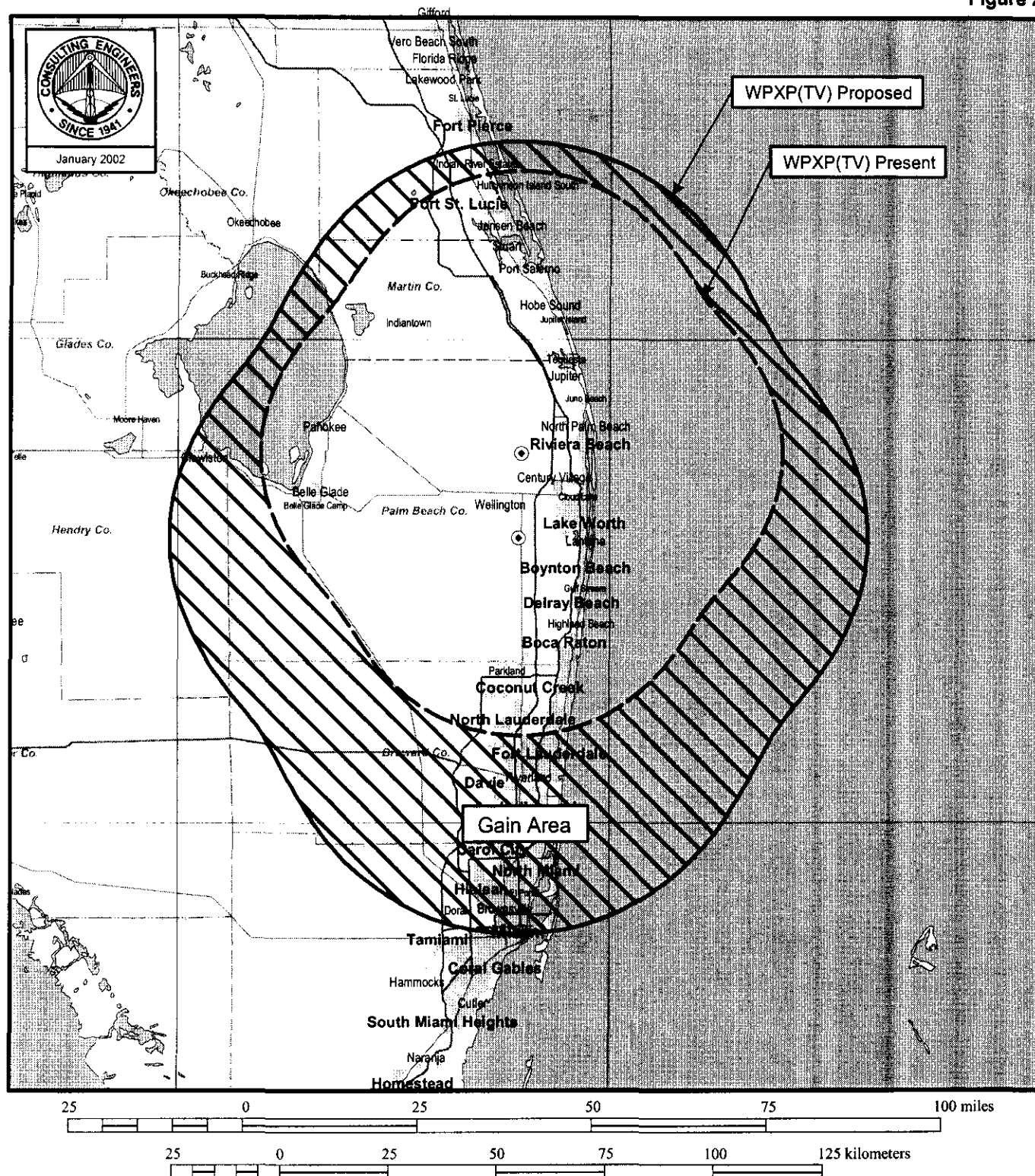
STATION WPXP(TV)

LAKE WORTH, FLORIDA

CH 56 5000 KW (MAX-DA) 383 M

du Treil, Lundin & Rackley, Inc Sarasota, Florida

Figure 2



PREDICTED GAIN AREA
STATION WPXP(TV)
LAKE WORTH, FLORIDA
CH 56 5000 KW (MAX-DA) 383 M
 du Treil, Lundin & Rackley, Inc Sarasota, Florida

Figure 3A

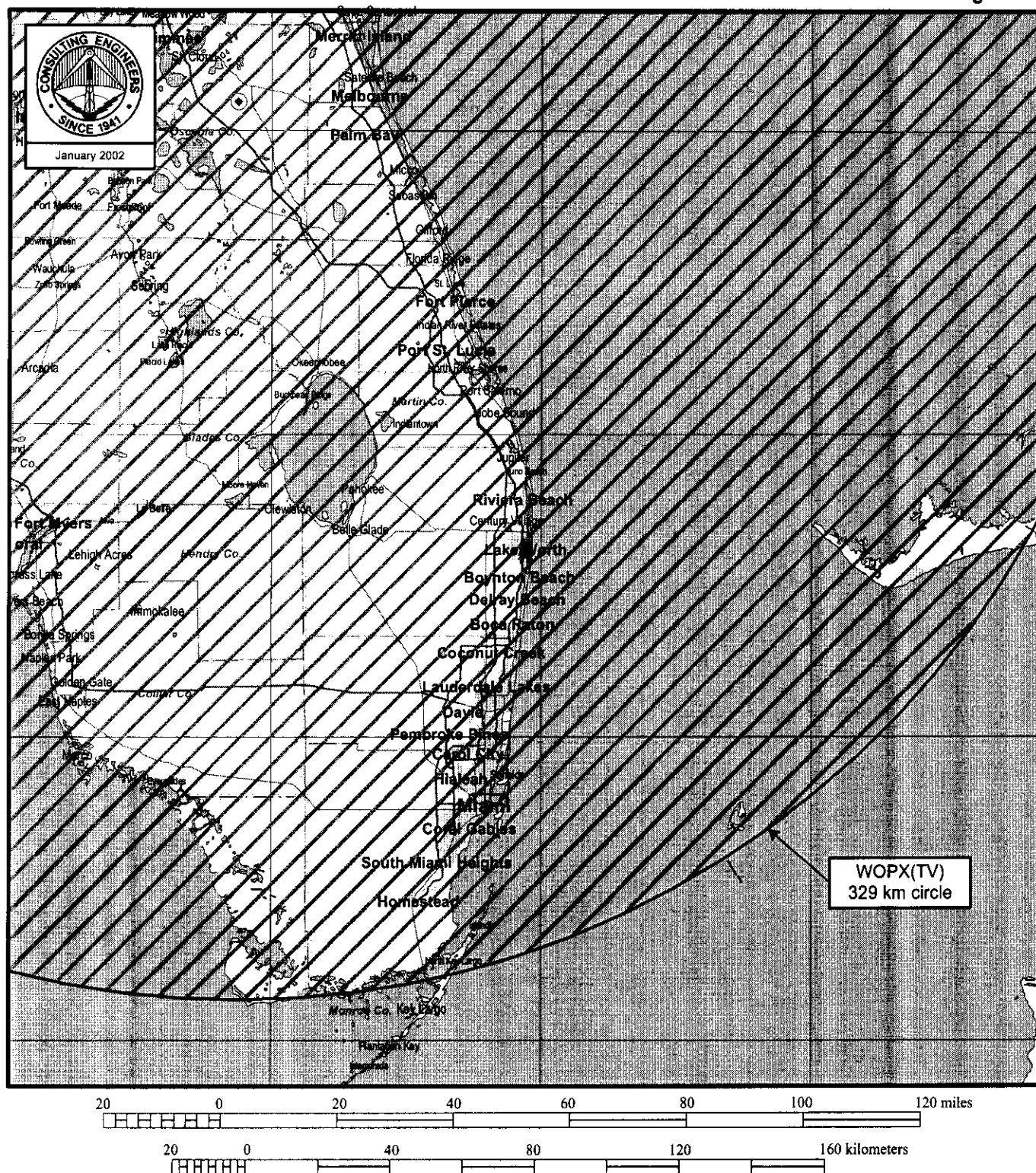
CDBS TV SEPARATION STUDY

Channel: 56
 Type: TV
 Zone: III

Separation Buffer: 65 km
 Coordinates: 26-35-20 N, 80-12-44 W
 Date: 1/28/2002

Call Id	City St	File Status	Channel Num	Zone	ERP HAAT	DA Id	Latitude Longitude	Bear	Dist. (km)	Req. min	max
WXEL-TV	WEST PALM B	BLET	42(+)	2140.000	D	26-34-37	246.0	3.3	95.7	95.7	
61084	FL LIC C	19820625KFIII		439	20643	080-14-32		92.43	Short		
<i>Interference protection provided per OET-69 analysis. See Technical Narrative.</i>											
WRXY-TV	TICE	BLCT	49(Z)	3470.000	D	26-47-08	278.3	159.0	95.7	95.7	
71580	FL LIC C	19950208KEIII		145	24151	081-47-41		63.31	Clear		
WSCV	FORT LAUDER	BMPCT	51(Z)	5000.000	D	25-59-09	178.4	66.8	31.4	31.4	
64971	FL CP C	20010301ABIII		304	39505	080-11-37		35.44	Clear		
WSCV	FORT LAUDER	BPCT	51(Z)	5000.000	D	25-58-46	178.7	67.5	31.4	31.4	
64971	FL CP C	19991102AAIII		300.1	36512	080-11-46		36.12	Clear		
WSCV	FORT LAUDER	BLCT	51(Z)	5000.000	D	25-57-59	179.8	69.0	31.4	31.4	
64971	FL LIC C	19891130KJIII		262	17233	080-12-33		37.57	Clear		
WPTV	WEST PALM B	BMPCD	55	900.000	D	26-35-20	90.1	0.0			
59443	FL CP C	20011025ABIII		386.5	41446	080-12-43				DTV	
DWPTV	WEST PALM B		55	1000.000	D	26-35-20	90.0	0.0			
	FL DTV		III	302		080-12-43				DTV	
WOPX	MELBOURNE	BLCT	56(Z)	5000.000	D	28-05-37	331.9	189.6	329.0	329.0	
67602	FL LIC C	19980327KFIII		472	18924	081-07-28		139.40	Short		
<i>Interference protection provided per OET-69 analysis. See Technical Narrative.</i>											
WFGC	PALM BEACH	BPCT	61(Z)	4000.000	D	26-35-17	104.5	0.4	31.4	31.4	
11123	FL APP C	20001229AAIII		294	38142	080-12-31		31.03	Short		
WFGC	PALM BEACH	BLCT	61(Z)	2400.000	D	26-45-47	2.0	19.3	31.4	31.4	
11123	FL LIC C	19930603KEIII		125	31711	080-12-19		12.09	Short		
<i>Interference protection provided per OET-69 analysis. See Technical Narrative.</i>											
WPPB-TV	BOCA RATON	BLET	63(Z)	646.000	D	26-09-11	175.0	48.5	95.7	95.7	
51349	FL LIC C	19990512KEIII		159	17998	080-10-12		47.23	Short		
WPPB-TV	BOCA RATON	BPET	63(Z)	5000.000	D	25-59-34	176.7	66.2	95.7	95.7	
51349	FL APP C	20000301AAIII		311	31668	080-10-27		29.55	Short		
<i>Interference protection provided per OET-69 analysis. See Technical Narrative.</i>											

Figure 3B



ALLOCATION STUDY
STATION WPXP(TV)
LAKE WORTH, FLORIDA
CH 56 5000 KW(MAX-DA) 383 M
 du Treil, Lundin & Rackley, Inc Sarasota, Florida



Exhibit No.
Figure 4A

Date	28 Jan 2002	
Call Letters	WPXP	Channel 56
Location	Lake Worth, FL	
Customer		
Antenna Type	TFU-29JSC-R P230	

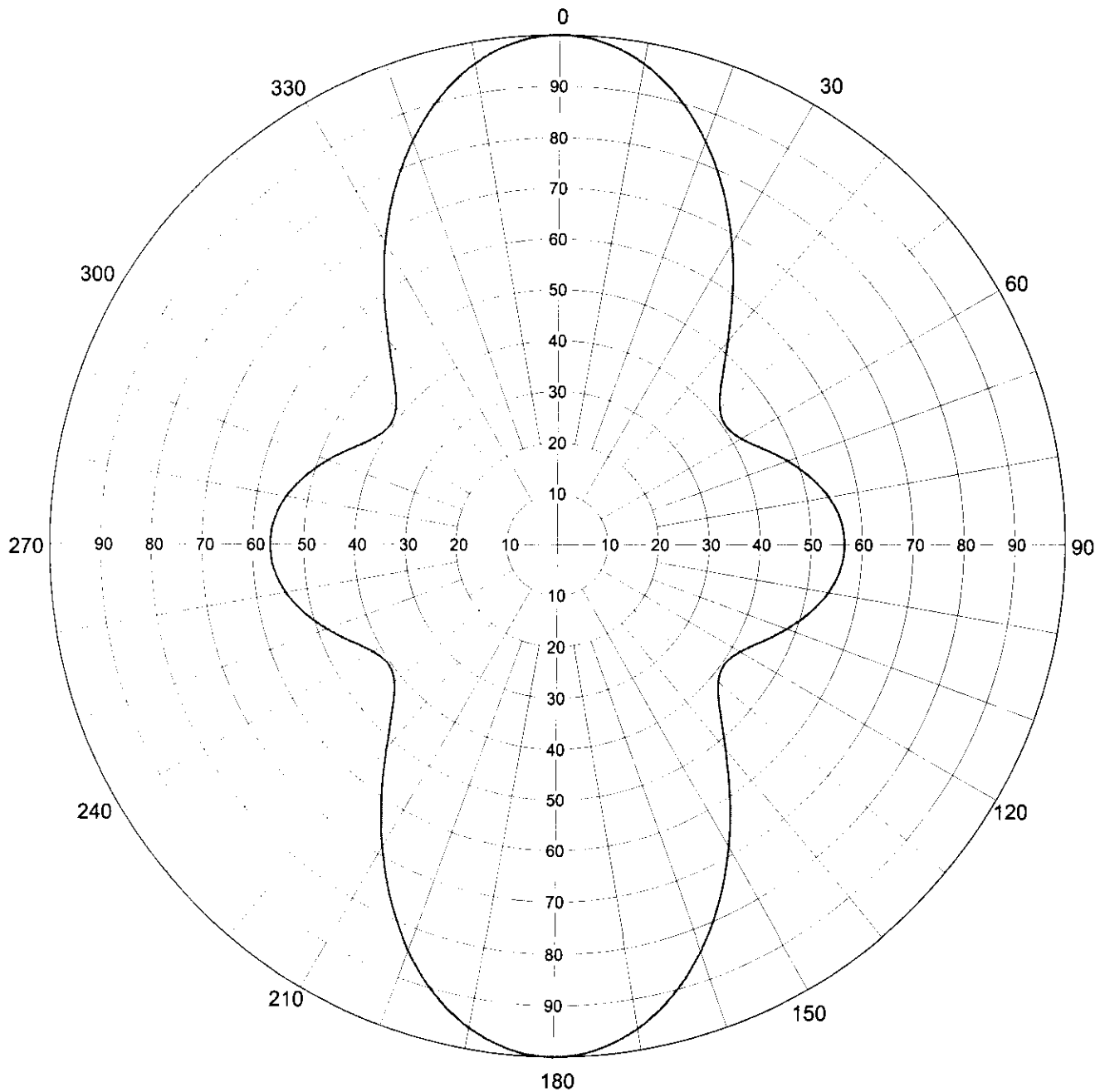
AZIMUTH PATTERN

RMS Gain at Main Lobe
Calculated / Measured

2.30
Calculated

Frequency
Drawing #

725 MHz
TFU-P230



Remarks:



Date **28 Jan 2002**
Call Letters **WPXP** Channel **56**
Location **Lake Worth, FL**
Customer
Antenna Type **TFU-29JSC-R P230**

TABULATION OF AZIMUTH PATTERN

Azimuth Pattern Drawing # **TFU-P230**

Angle	Field	ERP (kW)	ERP (dBk)
0	1.000	5000.0	36.99
10	0.959	4598.4	36.63
20	0.844	3561.7	35.52
30	0.683	2332.4	33.68
40	0.520	1352.0	31.31
50	0.417	869.4	29.39
60	0.418	873.6	29.41
70	0.482	1161.6	30.65
80	0.542	1468.8	31.67
90	0.566	1601.8	32.05
100	0.542	1468.8	31.67
110	0.482	1161.6	30.65
120	0.418	873.6	29.41
130	0.417	869.4	29.39
140	0.520	1352.0	31.31
150	0.683	2332.4	33.68
160	0.844	3561.7	35.52
170	0.959	4598.4	36.63
180	1.000	5000.0	36.99
190	0.959	4598.4	36.63
200	0.844	3561.7	35.52
210	0.683	2332.4	33.68
220	0.520	1352.0	31.31
230	0.417	869.4	29.39
240	0.418	873.6	29.41
250	0.482	1161.6	30.65
260	0.542	1468.8	31.67
270	0.566	1601.8	32.05
280	0.542	1468.8	31.67
290	0.482	1161.6	30.65
300	0.418	873.6	29.41
310	0.417	869.4	29.39
320	0.520	1352.0	31.31
330	0.683	2332.4	33.68
340	0.844	3561.7	35.52
350	0.959	4598.4	36.63

Maxima

Angle	Field	ERP (kW)	ERP (dBk)
0	1.000	5000.0	36.99
90	0.566	1601.8	32.05
180	1.000	5000.0	36.99
270	0.566	1601.8	32.05

Minima

Angle	Field	ERP (kW)	ERP (dBk)
55	0.405	820.1	29.14
125	0.405	820.1	29.14
235	0.405	820.1	29.14
305	0.405	820.1	29.14

Remarks: